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STATE OF HAWAII

HAWAII LABOR RELATIONS BOARD

In the Matter of DIRECTOR,	)	CASE NO. OSH 2010-12
DEPARTMENT OF LABOR AND	)	(Inspection No. 313078214)
INDUSTRIAL RELATIONS,	)	
	)	STIPULATION AND SETTLEMENT
Complainant,	)	AGREEMENT; EXHIBIT A; APPROVAL
	)	AND ORDER
vs.	)	
	)	
BRIDGESTONE RETAIL OPERATIONS,	)	
LLC,	)	
	)	
Respondent.	)	

**STIPULATION AND SETTLEMENT AGREEMENT**

Complainant Director of Labor and Industrial Relations ("Director") and Respondent BRIDGESTONE RETAIL OPERATIONS, LLC ("Respondent") having reached a full and complete settlement of the above-captioned contested case presently pending before the Hawaii Labor Relations Board ("Board") stipulate and agree as follows:

On or about December 1, 2009, the Director, by and through the State of Hawaii's Occupational Safety and Health Division ("HIOSH"), inspected Respondent's workplace located at 75-5629A Kuakini Highway, Kailua-Kona, Hawaii, 96740.

As a consequence of said inspection, the Director, through HIOSH's Administrator, issued a Citation and Notification of Penalty on March 18, 2010 ("Citation") to Respondent alleging violations of the Hawaii Occupational Safety and Health Standards and assessed an aggregate penalty of \$5,300.00. *See* Exhibit A.

Respondent timely contested citation 1, item 1 of the Citation, alleging a violation of section 12-60-2(a)(3) of the Hawaii Administrative Rules.

On or about April 28, 2010, the Respondent sent a check in the amount of \$1,800.00 to HIOSH in acceptance of the violations contained in the Citation other than citation 1, item 1.

THEREFORE, to avoid the expense of litigation and to compromise and settle the above-captioned case, the parties, by and through their respective representatives, stipulate and agree as follows:

1. The Board has jurisdiction over this contested case pursuant to section 396-11, Hawaii Revised Statutes ("HRS").
2. At all relevant times, Respondent maintained a workplace at 75-5629A Kuakini Highway, Kailua-Kona, Hawaii, 96740.
3. At all relevant times, Respondent was an employer, as defined in HRS § 396-3, and employed employees, as defined in HRS § 396-3, and was therefore subject to the requirements of HRS chapter 396, the Hawaii Occupational Safety and Health Law.
4. Respondent agrees that it has abated each violation it accepted in the Citation in compliance with the abatement requirements under Hawaii Administrative Rule § 12-51-22.
5. The Citation is amended as follows: Citation 1, item 1, alleging a serious

violation of section 12-60-2(a)(3) of the Hawaii Administrative Rules, and its corresponding penalty of \$3,500.00, shall be withdrawn, and Respondent will create and implement a workplace violence program (which may be incorporated into the company's overall safety and health program) that: 1) expresses zero tolerance for workplace violence, including verbal and non-verbal threats; 2) takes the appropriate steps to ensure that no employee who reports or experiences an instance of alleged workplace violence faces reprisal; 3) encourages employees to promptly report alleged instances of workplace violence to management, which must be recorded; and 4) outlines a comprehensive plan for maintaining security in the workplace. The company may tailor its program according to the size and complexity of the workplace.

6. Except for the stipulated amendments described above, the Citation is confirmed in all other respects and upon approval by the Board, this Agreement and the Citation, as amended, shall become a final order of the Director.

7. Respondent shall post a copy of this Agreement and Order in a prominent place at or near the location of the posting of the Citation, and the Agreement and Order shall remain posted for three working days (excluding weekends and State holidays).

8. Respondent shall continue to comply with HRS chapter 396, the Hawaii Occupational Safety and Health Law, and the related rules.

9. Nothing in this Agreement shall bar the Director from taking any action regarding future acts or practices by Respondent which may be alleged to violate HRS chapter 396, the Hawaii Occupational Safety and Health Law, or the related rules.


10. Upon approval of this Agreement, all proceedings before the Board shall be dismissed.

DATED: Honolulu, Hawaii, May 9, 2011.

APPROVED AS TO FORM:

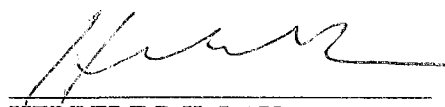
BRIDGESTONE RETAIL OPERATIONS, LLC

  
JOHN R. DWYER, JR.  
Attorney for Respondent

By:   
Its *Authorized Representative of Labor and Employment*

APPROVED AS TO FORM:

DIRECTOR OF LABOR AND  
INDUSTRIAL RELATIONS

  
HERBERT B.K. LAU  
Deputy Attorney General  
Attorney for Director of Labor and  
Industrial Relations, State of Hawaii

  
DWIGHT TAKAMINE

APPROVED AND SO ORDERED BY  
HAWAII LABOR RELATIONS BOARD:

ORDER NO. 432

DATED: May 9, 2011

  
JAMES B. NICHOLSON, Chair

  
SARAH R. HIRAKAMI, Member

  
NORMAN K. KATO II, Member

# State of Hawaii

Department of Labor and Industrial Relations  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813  
Phone: (808)586-9110 FAX: (808)586-9104



Certified Number: 7006 0100 0002 8176 1517

## Citation and Notification of Penalty

### To:

Bridgestone Retail Operations, LLC  
and its successors  
75-5629A Kuakini Hwy  
Kailua-Kona, HI 96740

Inspection Number: 313078214 (Charles Clark)  
Inspection Date(s): 12/01/2009- 12/01/2009  
Issuance Date: 03/18/2010  
OSHSO ID: X8851  
Optional Report No.: 00310  
Inspection Type: Complaint  
Scope of Inspection: Comprehensive Inspection

### Inspection Site:

75-5629A Kuakini Hwy  
Kailua-Kona, HI 96740

*The violation(s) described in this Citation and Notification of Penalty is (are) alleged to have occurred on or about the day(s) the inspection was made unless otherwise indicated within the description given below.*

This Citation and Notification of Penalty describes violations of the Hawaii Occupational Safety and Health Law. The penalty(ies) listed herein is (are) based on these violations. You must abate the violations referred to in this Citation by the dates listed and pay the penalties, unless within 20 calendar days from your receipt of this Citation and Notification of Penalty, you mail a notice of contest to the State of Hawaii Occupational Safety and Health Division (HIOSH) at the address shown above. Please refer to the enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) which outlines your rights and responsibilities and which should be read in conjunction with this form. Issuance of this Citation does not constitute a finding that a violation of the Law has occurred unless there is a failure to contest as provided for in the Law or, if contested, unless this Citation is affirmed by the Hawaii Labor Relations Board (HLRB) or a court.

**Posting** - The law requires that a copy of this Citation and Notification of Penalty be posted immediately in a prominent place at or near the location of the violation(s) cited herein, or, if it is not practicable because of the nature of the employer's operations, where it will be readily observable by all affected employees. This Citation must remain posted until the violation(s) cited herein has (have) been abated, or for 3 working days (excluding weekends and State holidays), whichever is longer. The penalty dollar amounts need not be posted and may be marked out or covered up prior to posting.

**Informal Conference** - An informal conference is not required. However, if you wish to have such a conference you may request one with the Administrator during the 20 calendar day contest period. During such an informal conference, you may present any evidence or views which you believe would support an adjustment to the citation(s) and/or penalty(ies).

If you are considering a request for an informal conference to discuss any issues related to this Citation and Notification of Penalty, you must take care to schedule it early enough to allow time to contest after the informal conference, should you decide to do so. Please keep in mind that a written letter of intent to contest must be submitted to the Administrator within 20 calendar days of your receipt of this Citation. The running of this contest period is not interrupted by an informal conference.

If you decide to request an informal conference, please complete, remove and post the page 5, Notice to Employees, next to this Citation and Notification of Penalty as soon as the time, date, and place of the informal conference have been determined. Be sure to bring to the conference any and all supporting documentation of existing conditions as well as any abatement steps taken thus far. If conditions warrant, we can enter into an informal settlement agreement which amicably resolves this matter without litigation or contest.

**Employers' Right to Contest** - You have the right to contest this Citation and Notification of Penalty. You may contest all citation items or only individual items. You may also contest penalties and/or abatement dates without contesting the underlying violations. Unless you inform the Administrator in writing that you intend to contest the citation(s) and/or penalty(ies) within 20 calendar days after receipt, the citation(s) and the penalty(ies) will become a final order of the Department of Labor and Industrial Relations and may not be reviewed by any court or agency. Once a letter of contest is received, it becomes the jurisdiction of the HLRB.

**Penalty Payment** - Penalties are due within 20 calendar days of receipt of this notification unless contested. Make your check or money order payable to "Director of Budget and Finance." Please indicate the Inspection Number on the remittance.

HIOSH does not agree to any restrictions or conditions or endorsements put on any check or money order for less than the full amount due, and will cash the check or money order as if these restrictions, conditions, or endorsements do not exist.

**Notification of Corrective Action** - For each violations which you do not contest, you are required by Section 12-51-22 to submit an Abatement Certification to HIOSH. The certification must be sent by you within 5 calendar days of the abatement date indicated on the citation. For **Willful** and **Repeat** violations, documents (examples: photos, copies of receipts, training records, etc.) demonstrating that abatement is complete must accompany the certification. Where the citation is classified as **Serious** and the citation states that abatement documentation is required, documents such as those described above are required to be submitted along with the abatement certificate. If the citation indicates that the violation was corrected during the inspection, no abatement certification is required for that item.

**All abatement verification documents must contain the following information:** 1) Your name and address; 2) the inspection number (found on the front page); 3) the citation and citation item number(s) to which the submission relates; 4) a statement that the information is accurate; 5) the signature of the employer or employer's authorized representative; 6) the date the hazard was corrected; 7) a brief statement of how the hazard was corrected; and 8) a statement that affected employees and their representatives have been informed of the abatement.

The law also requires a copy of all abatement verification documents, required by Section 12-51-22 to be sent to HIOSH, also be posted at the location where the violation appeared and the corrective action took place.

**Employer Discrimination Unlawful** - The law prohibits discrimination by an employer against an employee for filing a complaint or for exercising any rights under this Act. An employee who believes that he/she has been discriminated against may file a complaint no later than 60 days after the discrimination occurred with the Hawaii Occupational Safety and Health Division at the address shown above.

**Employer Rights and Responsibilities** - The enclosed booklet (Employer Rights and Responsibilities Following a HIOSH Inspection) outlines additional employer rights and responsibilities and should be read in conjunction with this notification.

**Employees' Right to Contest** - The law gives an employee or his/her representative the opportunity to object to any abatement date set for a violation if he/she believes the date to be unreasonable. The contest must be mailed to the Hawaii Occupational Safety and Health Division at the address shown above and postmarked within 20 calendar days of the receipt by the employer of this Citation and Notification of Penalty.

**Inspection Activity Data** - You should be aware that OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at [WWW.OSHA.GOV](http://WWW.OSHA.GOV). If you have any dispute with the accuracy of the information displayed, please contact this office.

## ABATEMENT CERTIFICATION

DARWIN L.D. CHING, DIRECTOR  
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS  
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION  
830 PUNCHBOWL STREET, ROOM 425  
HONOLULU, HI 96813

Bridgestone Retail Operations, LLC  
75-5629A Kuakini Hwy  
Kailua-Kona, HI 96740

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
How corrected: \_\_\_\_\_

The hazard referenced in Inspection Number \_\_\_\_\_ for the violation identified as  
Citation \_\_\_\_\_ and Item \_\_\_\_\_ was corrected on \_\_\_\_\_  
How corrected: \_\_\_\_\_

I attest that the information contained in this document is accurate and that the affected employees and their  
representatives have been informed of the abatement activities described in this certification.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Typed or Printed Name



**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety and Health Division



**NOTICE TO EMPLOYEES OF INFORMAL CONFERENCE**

An informal conference has been scheduled with HIOSH to discuss the citation(s) issued on 03/18/2010. The conference will be held at the HIOSH office located at 830 PUNCHBOWL STREET, ROOM 425, HONOLULU, HI, 96813 on \_\_\_\_\_ at \_\_\_\_\_.

Employees and/or representatives of employees have a right to attend an informal conference.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 313078214

**Inspection Dates:** 12/01/2009 - 12/01/2009

**Issuance Date:** 03/18/2010



**Citation and Notification of Penalty**

**Company Name:** Bridgestone Retail Operations, LLC  
**Inspection Site:** 75-5629A Kuakini Hwy, Kailua-Kona, HI 96740

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**Citation 1 Item 1** Type of Violation: **Serious**

HAR §12-60-2(a)(3) was violated because:

Adequate steps were not taken to stop an employee who was harassing another employee with foul, abusive, and derogatory language. Adequate steps were also not taken to protect the same employee from further violent acts after the employee sustained bruising to her left shoulder after being struck by a tire and rim thrown at her by the other employee.

§12-60-2(a)(3) states "Every employer shall provide safe work places and practices by elimination or reduction of existing or potential hazards. Elimination of existing or potential hazards by design, process substitution, or other appropriate methods is preferred because it eliminates the need for further employee protection. When elimination is not feasible, reduction of existing or potential hazards to acceptable levels, using methods such as engineering or administrative controls, isolation, or guarding, shall be promptly used. When these methods are inadequate to reach acceptable levels, personal protective equipment shall be provided and used."

Location: Establishment

Date By Which Violation Must be Abated:  
Penalty:

03/22/2010  
\$ 3,500.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 313078214

**Inspection Dates:** 12/01/2009 - 12/01/2009

**Issuance Date:** 03/18/2010



**Citation and Notification of Penalty**

**Company Name:** Bridgestone Retail Operations, LLC

**Inspection Site:** 75-5629A Kuakini Hwy, Kailua-Kona, HI 96740

The alleged violations below (2a & 2b) have been grouped because they involve similar or related hazards that may increase the potential for injury or illness.

**Citation 1 Item 2a** Type of Violation: **Serious**

29 CFR 1910.23(c)(1) [Refer to chapter 12-72.1, HAR] was violated because:

A walkway that was 8 feet above the lower level was not provided with midrailings. The lack of midrailings exposed employees to potential serious injuries due to fall hazards.

29 CFR 1910.23(c)(1) states "Every open-sided floor or platform 4 feet or more above adjacent floor or ground level shall be guarded by a standard railing (or the equivalent as specified in paragraph (e)(3) of this section) on all open sides except where there is entrance to a ramp, stairway, or fixed ladder. The railing shall be provided with a toeboard wherever, beneath the open sides,

- (i) Persons can pass,
- (ii) There is moving machinery, or
- (iii) There is equipment with which falling materials could create a hazard."

Location: Storage mezzanine walkway

**Date By Which Violation Must be Abated:**

03/29/2010

**Penalty:**

\$ 1,100.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 313078214

**Inspection Dates:** 12/01/2009-12/01/2009

**Issuance Date:** 03/18/2010



**Citation and Notification of Penalty**

**Company Name:** Bridgestone Retail Operations, LLC

**Inspection Site:** 75-5629A Kuakini Hwy, Kailua-Kona, HI 96740

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**Citation 1 Item 2b** Type of Violation: **Serious**

29 CFR 1910.23(e)(1) [Refer to chapter 12-72.1, HAR] was violated because:

The top railing measured 36.5 inches above the walking surface on a walkway that was 8 feet above the lower level instead of the required 42 inches.

29 CFR 1910.23(e)(1) states "A standard railing shall consist of top rail, intermediate rail, and posts, and shall have a vertical height of 42 inches nominal from upper surface of top rail to floor, platform, runway, or ramp level. The top rail shall be smooth-surfaced throughout the length of the railing. The intermediate rail shall be approximately halfway between the top rail and the floor, platform, runway, or ramp. The ends of the rails shall not overhang the terminal posts except where such overhang does not constitute a projection hazard."

Location: Storage Mezzanine walkway

Date By Which Violation Must be Abated:

03/29/2010

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 313078214  
**Inspection Dates:** 12/01/2009- 12/01/2009  
**Issuance Date:** 03/18/2010



**Citation and Notification of Penalty**

**Company Name:** Bridgestone Retail Operations, LLC  
**Inspection Site:** 75-5629A Kuakini Hwy, Kailua-Kona, HI 96740

**Citation 2 Item 1** Type of Violation: **Other**

29 CFR 1904.1(a)(2) [Refer to chapter 12-52.1, HAR] was violated because:

OSHA 300 and 300A injury and illness records were never made available during the inspection or after being requested.

29 CFR 1904.1(a)(2) states "If your company had more than ten (10) employees at any time during the last calendar year, you must keep OSHA injury and illness records unless your establishment is classified as a partially exempt industry under '1904.2."

Location: Establishment

Date By Which Violation Must be Abated:  
Penalty:

03/24/2010  
\$ 700.00

**Citation 2 Item 2** Type of Violation: **Other**

29 CFR 1910.157(c)(1) [Refer to chapter 12-63.1, HAR] was violated because:

A Portor Roemer portable fire extinguisher had the access blocked by a tire balancing weight rack.

29 CFR 1910.157(c)(1) states "The employer shall provide portable fire extinguishers and shall mount, locate and identify them so that they are readily accessible to employees without subjecting the employees to possible injury."

Location: Maintenance bay

Date By Which Violation Must be Abated:  
Penalty:

03/22/2010  
\$ 0.00

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 313078214

**Inspection Dates:** 12/01/2009 - 12/01/2009

**Issuance Date:** 03/18/2010



**Citation and Notification of Penalty**

**Company Name:** Bridgestone Retail Operations, LLC

**Inspection Site:** 75-5629A Kuakini Hwy, Kailua-Kona, HI 96740

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**Citation 2 Item 3** Type of Violation: **Other**

29 CFR 1910.244(a)(1)(ii) [Refer to chapter 12-79.1, HAR] was violated because:

A Magic hydraulic jack did not have the rated load capacity legibly marked anywhere on the jack.

29 CFR 1910.244(a)(1)(ii) states "The rated load shall be legibly and permanently marked in a prominent location on the jack by casting, stamping, or other suitable means."

Location: Maintenance and repair area

Date By Which Violation Must be Abated:

03/22/2010

Penalty:

\$ 0.00

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See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.

**State of Hawaii**

Department of Labor and Industrial Relations  
Hawaii Occupational Safety And Health Division

**Inspection Number:** 313078214

**Inspection Dates:** 12/01/2009 - 12/01/2009

**Issuance Date:** 03/18/2010



**Citation and Notification of Penalty**

**Company Name:** Bridgestone Retail Operations, LLC  
**Inspection Site:** 75-5629A Kuakini Hwy, Kailua-Kona, HI 96740

**Citation 2 Item 4** Type of Violation: **Other**

29 CFR 1910.305(g)(2)(iii) [Refer to chapter 12-89.1, HAR] was violated because:

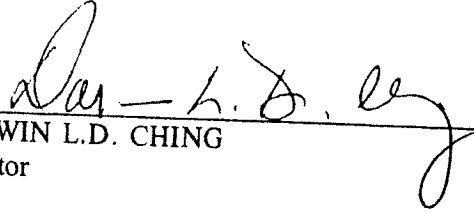
The outer insulation on the power cord to a 3-wire Coats 1004 tire balancer was pulled back from where the cord entered the housing, which provided no strain relief.

29 CFR 1910.305(g)(2)(iii) states "Flexible cords & cables shall be connected to devices and fittings so that strain relief is provided that will prevent pull from being directly transmitted to joints or terminal screws."

Location: Maintenance/Repair shop

Date By Which Violation Must be Abated:  
Penalty:

03/22/2010  
\$ 0.00

  
\_\_\_\_\_  
DARWIN L.D. CHING  
Director

See pages 1 through 5 of this Citation and Notification of Penalty for information on employer and employee rights and responsibilities.